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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Tenth session

SUMMARY RECORD OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 17 May 1994, at 3 p.m.

Chairperson: Mr. ALVAREZ VITA

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(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant

Mauritius

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GE.94-16682 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS (agenda item 4) (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations on Mauritius (E/C.12/1994/WP.5)

Paragraphs 1 to 4

1. Mr. SIMMA, Country Rapporteur, said that he had followed the standard formula in drafting the first four paragraphs which contained background information on Mauritius. There was therefore no need to discuss their content.

2. Paragraphs 1 to 4 were approved.

Paragraph 5

3. Mr. WIMER ZAMBRANO said that in the interests of clarity, the sentence reading "About 75 per cent of the country's food requirements appear to be imported", should be amended to read "About 75 per cent of the country's food requirements are imported" thus making the statement more positive.

4. It was so agreed.

5. Paragraph 5, as amended, was approved.

Paragraph 6

6. Mr. SIMMA said that on the basis of information he had received from reliable sources, concerning the possible introduction of fees for university studies, the assertion in the eighth sentence that "Education is free at all levels" should be amended to read "still free".

7. In the tenth sentence, the date should read "the 1960s". Furthermore, following consultation with experts, the figure of 4 per cent should be amended to read 3.5 per cent.

8. Mr. GRISSA said that even a figure of 3.5 per cent was excessively high. No country in Africa could reach such a sustained rate of population growth, and Mauritius least of all. If the Committee could defer further consideration of the sentence, he would provide statistics in support of his statement.

9. It was so agreed.

Paragraph 7

10. Mr. GRISSA suggested that the sentence "Discrimination and violence against women continue to be ongoing social problems", be amended to read "an ongoing social problem".

11. Mr. SIMMA said that he had no objection to the amendment although he had seen violence and discrimination as two separate issues. He also suggested that "ongoing" be deleted for reasons of style.

12. Mr. WIMER ZAMBRANO said that questions of style would be dealt with by the secretariat at a later stage and need not be discussed by the Committee.

13. Paragraph 7, as amended, was approved.

Paragraph 8

14. Mr. WIMER ZAMBRANO said that the list of breaches of discipline in the second sentence should be deleted in order to make the text as concise as possible.

15. It was so agreed.

16. The CHAIRPERSON suggested that the phrase "citizens of Mauritius" in the second sentence should be amended to read "nationals of Mauritius". The Third Committee of the General Assembly was discussing the difference between a national and a citizen in legal terms, as nationals did not necessarily enjoy the rights of a citizen.

17. Mr. GRISSA said that the entire reference to seamen who "may be forcibly conveyed on board ships" was unclear.

18. Mr. SIMMA said that the reference was to seamen who arrived in Mauritius on foreign ships. The question, however, was not so much the residence of the sailors, but, according to the ILO Committee of Experts on the Application of Conventions and Recommendations, an issue of forced labour. The wording was an unmarked quotation from an ILO document which had used the word "citizen" and had undoubtedly had a sound legal basis for its choice of terminology.

19. Mr. WIMER ZAMBRANO suggested that the expression "who are aliens" should be used.

20. The CHAIRPERSON suggested that as it was a direct quotation, the words should be marked as such with the relevant punctuation.

21. Mr. SIMMA said that if inverted commas were to be inserted, he would have to do the same for all the references in the text, some of which were not in fact verbatim reproductions but had been modified either grammatically or otherwise.

22. Mr. GRISSA, supported by Mr. KOUZNETSOV, suggested that the phrase should be amended to read "foreign seamen may be forcibly conveyed on board ships".

23. It was so agreed.

24. Paragraph 8, as amended, was approved.

Paragraph 9

25. Mr. WIMER ZAMBRANO considered that in the first sentence it would be more effective to omit the words "on the stated assumption that their productivity is lower in such labour-intensive work" after the words "women are paid lower wages". There was no need to dwell on the presumed reason for women's lower wages.

26. Mr. SIMMA said that the issue was more complicated than it seemed. The work involved - in the sugar cane industry - was very heavy. Over a given period a woman would carry fewer bags on her back than a man would, so the employer was strictly speaking justified in paying her less. He questioned whether that was an acceptable state of affairs either for the Committee or for the International Labour Organisation.

27. Mr. TEXIER suggested deleting the reference to article 3, since it had featured in an earlier paragraph. Secondly, pointing out that the paragraph dealt with two different topics, he thought it would be more sensible to divide it into two separate paragraphs. With regard to the deletion suggested by Mr. Wimer Zambrano, in his view the draft should be left as it stood. Whether wages were based on the piecework system - in which case there was inequality among men, too - or on a daily rate, women clearly got the worst of the bargain.

28. Mr. GRISSA said that the issue was equal pay for equal work. If male and female teachers, for example, were paid different rates, that was easily measured; but the matter was not so simple in the case of manual work. He added that the European Union was, indeed, intending to eliminate provisions for a minimum wage because it constituted an obstacle to efficient working practices.

29. Mr. SIMMA said on a point of order, that the issue under discussion was women doing the same kind of work as men, but at lower wages. Talk of the European Union was irrelevant.

30. Mr. GRISSA said that the sentence, as it stood, did not speak of equal pay for equal work; on the contrary, it clearly referred to lower wages for less work.

31. Mrs. JIMENEZ BUTRAGUEÑO agreed with Mr. Texier that the reference to article 3 was unnecessary, given that article 7 said all that was needed on the question of equal pay. Secondly, she considered that more prominence ought to be given to the idea that women's work was as valuable as men's. She therefore favoured inserting the Committee's concern regarding the absence of legislation on equal pay in an earlier part of the paragraph.

32. Mr. KOUZNETSOV said that the Committee should be clear as to what it could or could not note with concern. In practice there would always be inequalities of wages one way or another. Most members of the Committee were not economists, so it would be preferable not to dwell on a specific set of circumstances; rather, paragraph 9 should open with the Committee's concern at the absence of legislation requiring equal pay for equal work: there the Committee was on firm ground.

33. Mr. WIMER ZAMBRANO reiterated his preference for the deletion he had suggested earlier. In his view the phrase in question implied that the Committee accepted that there could be reasons for discriminating against women, on such grounds as their weakness or inferiority. He suggested that Mr. Simma should redraft the sentence, taking into account all that had been said.

34. Mrs. BONOAN-DANDAN expressed her agreement with Mr. Kouznetsov's approach, although she considered that the reference to women's lower wages should be retained. She therefore suggested that the sentence should be amended to read: "... the Committee notes with concern that there exists no legislation requiring equal pay for equal work and that in the agricultural sectors of the Mauritian economy, for work of the same value, women are paid lower wages".

35. Ms. HODGES (International Labour Organisation), asked for her opinion, said that the Committee was moving to a form of wording approximating to that of the ILO's Equal Remuneration Convention, 1951 (No. 100), which referred to "equal pay for work of equal value". The Convention was the product of much jurisprudence on determining what work was of equal value. Many countries had in the past flagrantly violated the principle of equal value, but most had now changed their legislation, if not always quite satisfactorily. She added that care had to be taken over discussing productivity in relation to discrimination; in some cases countries had used the issue of productivity to justify paying women less for doing the same work as men.

36. Mr. GRISSA said that the question at issue was one of value, not of law. An employer could not pay a salary that was not justified by the value of the product, otherwise he would go bankrupt. Differentiation of wages existed and was inevitable. He supported the concept of equal pay for equal work and he believed that the Committee should restrict itself to that principle. It should not seek to legislate for the world.

37. Mr. TEXIER supported the compromise wording suggested by Mrs. Bonoan-Dandan. He added that the Committee should avoid digressing into discussions of productivity. Its concern was human rights; owners of sugar-cane factories did not need its support.

38. Mr. SIMMA welcomed the suggestions by Mr. Kouznetsov and Mrs. Bonoan-Dandan regarding the reordering of the paragraph. He would also be glad to accept Mr. Texier's suggestion of dividing paragraph 9 into two parts. He pleaded, however, for the retention of the phrase that Mr. Wimer Zambrano and others sought to omit. Its sentiments were in line with the remarks of the representative of the ILO; it made clear the Committee's concern that women were paid less precisely because they were unable to carry such heavy weights as men could. The distinction in Mauritius was not between weak men and strong women, but between all men and all women.

39. The CHAIRPERSON said that following the discussion paragraph 9, in its entirety, should read as follows:

> "9. With regard to article 7 of the Covenant, the Committee notes with concern that there exists no legislation requiring equal pay for equal work and that in the agricultural sector of the Mauritian economy, for work of the same value, women are paid lower wages on the stated assumption that their productivity is lower in such labour-intensive work."

40. Paragraph 9, as amended, was approved.

Paragraph 10

41. Mr. GRISSA, turning to the first sentence of the new paragraph 10, formerly the second half of paragraph 9, queried the phrase "excessive overtime work". "Excessive" was a subjective term. He asked whether such work was considered excessive in Mauritius or whether the Committee was imposing its own standards.

42. Mr. SIMMA said that as far as Mauritius was concerned, overtime, which was endemic owing to a labour shortage, was excessive by ILO standards.

43. He suggested inserting an additional sentence, so that the first two sentences would read:

> "The Committee is also concerned about excessive overtime work in the Export Processing Zones. In these Zones the Labour Act does not apply, which leaves more than 80,000 unprotected."

44. He also wished to refer in the paragraph to the Development Works Corporation, which had been a scheme to provide work for people deemed unemployable even in conditions of a labour shortage. Labour legislation had not applied to the Corporation, on the grounds that it was not a company but a kind of rehabilitation service. The Corporation had, however, subsequently been disbanded and its workers left without jobs. It was maintained that they would find other work, but he was concerned that if they had needed help originally they needed it still.

45. Mrs. JIMENEZ BUTRAGUEÑO endorsed the proposal to make a reference to the Development Works Corporation.

46. Mrs. AHODIPKE said that the State often waived fiscal and social security payments by industrial firms in the Export Processing Zone. That was wrong, since workers in the Zone ought to be covered by social security.

47. Mr. SIMMA proposed adding the following sentence at the end of the paragraph:

> "With regard to 100,000 foreign workers, mainly in the textile and construction industries, the Government appears to show little willingness to protect these people against over-exploitation."

48. Mr. TEXIER endorsed the proposed new sentence, but considered that the expression "over-exploitation" was sufficiently specific. It would be better to refer to respect for article 7 of the Covenant and the ILO Conventions ratified by Mauritius.

49. Mr. SIMMA agreed, and proposed to reword the text as follows: "... the Government appears to show little willingness to ensure that these people are being treated in a manner consistent with article 7 and the pertinent international labour standards".

50. The CHAIRPERSON, speaking as a member of the Committee, suggested that the information to the effect that the workers who were involved were from India, China and Madagascar, should be included in the final text.

51. It was so agreed.

52. Paragraph 9, as amended, was approved.

Paragraph 10

53. Mr. TEXIER proposed to reword the expression "la loi sur les relations professionnelles de 1973", to read "la loi de 1973 sur les relations professionnelles" in the French version of paragraph 10.

54. The CHAIRPERSON said that that point would be noted by the secretariat.

55. Mr. SIMMA proposed to include a new penultimate sentence reading: "Instead, the proposed Trade Union and Labour Relations Act, which is to replace the Industrial Relations Act, appears in some respects to be even less favourable to trade unions".

56. He explained that in the 1970s there had been a very lively trade union movement that had engaged in politics. In 1973 the Industrial Relations Act had come into effect, curbing the powers of the trade unions and introducing compulsory arbitration and the de facto curtailment of the right to strike. It had been expected that the new legislation would be more favourable to the unions and the right to strike because it was known that the Garrioch Committee had adopted recommendations in that regard, but in fact the new legislation now before Parliament was even more restrictive, since the Government believed that employers should have full control over their workers.

57. Moreover, he wished to amend the concluding sentence of the paragraph to read: "The Committee still shares the hope of the ILO Committee of Experts ...", and at the end of the paragraph insert the following sentences: "However, the Committee cannot but discern a certain tendency on the part of the Government of Mauritius to use labour legislation to block trade union recognition and to dismiss workers. The Committee's general impression is that Mauritius is returning to the tradition according to which the Government supports firm control by the employers over their workers".

58. Paragraph 10, as amended, was approved.

Paragraph 11

59. Mr. SIMMA said that, having recently received important information, he proposed inserting the following sentences in the paragraph: "The Committee notes that the Government is presently considering to convert universal old age pensions into means-tested pensions. In this regard the Committee is concerned that, for instance, the cheapest government housing available at ground floor level costs two and a half times the amount of that pension".

60. Experts agreed that universal pensions were fairer. The problem with means-tested pensions lay in the way the means were tested, which in Mauritius was apparently by superficial door-to-door inspections.

61. Mr. CEAUSU, supported by Mr. TEXIER, said that in order to accept the amendment the Committee would have to be told the source of the information. Moreover, its position should be based not on intentions, but on legislation.

62. Mr. SIMMA withdrew his proposal.

63. Paragraph 11 was approved.

Paragraph 12

64. Mr. WIMER ZAMBRANO asked what the words "sufficiently enforced" meant. Was there systematic violation of child labour legislation?

65. Mr. SIMMA replied that the problem was rather one of lax application.

66. Mr. WIMER ZAMBRANO proposed changing the words "sufficiently enforced" to "strictly enforced".

67. It was so agreed.

68. Paragraph 12, as amended, was approved.

New paragraph 13

69. Mr. SIMMA proposed that a new paragraph should be inserted between paragraphs 12 and 13 reading as follows: "With regard to article 11, the Committee notes with concern that a high proportion of workers in Mauritius draw salaries lower than what is required to feed, clothe, and house their families. More specifically, regarding the right to food, the Committee is concerned about the fact that in June 1993 the Government of Mauritius abolished subsidies on rice and flour."

70. The Government's argument was that when the subsidy, which had been in existence since the independence of Mauritius, was given to all, the not-so-needy had fed the rice and flour to their pets. The Government had replaced the subsidy by a payment to the needy of the equivalent of an entirely inadequate US$1.30 per month to buy flour and rice in the shops. Moreover there was apparently a problem in deciding on the recipients of the payment.

71. Mr. CEAUSU considered that abolishing the food subsidy was in itself no bad thing if protective measures were extended to most disadvantaged groups, as in his own country and elsewhere in eastern Europe. The Committee could not make a statement of the kind proposed without justifying it. Could Mr. Simma add wording to meet that concern?

72. Mr. SIMMA agreed that the phrase ", without replacing them by a system providing food security for the most vulnerable groups in Mauritius" could be added to the end of the second sentence.

73. It was so decided.

74. The CHAIRPERSON said that the first sentence was very vague as to actual salary levels and how many persons composed a family.

75. Mr. SIMMA said that his source had been a study published by Justitia et Pax, a Catholic non-governmental organization, based on the report of a Port Louis diocese, well-documented by figures showing that one salary was not enough to support a family. The sentence could either be deleted or burdened inordinately with figures. In any case, he had found it remarkable that in a prosperous country like Mauritius workers were paid so little.

76. Mr. GRISSA observed that it was a matter of principle as to whether the Committee had to accept the word of any organization happening to publish information. The International Labour Organisation or a State Department were one matter, but the Committee could not base its judgements of countries on obscure sources of information that could not be verified. Its reputation was at stake and it had to take the sources it cited seriously.

77. Mr. SIMMA observed that in the introduction to all concluding observations written in the absence of a State party report, Governments were always clearly told that by not submitting a report they had obliged the Committee to collect information from non-official sources, which, often being non-governmental organizations critical of the Government, might be one-sided. He himself would hesitate to call all such sources obscure - in the case in point, it was the Catholic Church - or to try to rank the reliability of non-governmental organizations.

78. The document he had used, which he considered a trustworthy source, had itemized the minimal monthly cost of living for a family of four, including even the cost of such things as bedding and telephone bills, and had stated that plantation workers' wages were 60 per cent of the average family budget.

79. Mr. GRISSA asked whether the itemized list was in fact trustworthy. By African standards, for instance, a telephone would indicate a very high standard of living.

80. Mr. SIMMA pointed out that Mauritius was very different from countries on the African mainland, often being referred to as the Switzerland of the southern hemisphere. It seemed to be a country that was extremely well-off,

and a telephone would therefore be normal for the average family. He agreed, however, that if the first sentence seemed too vague without any detailed figures, it could be deleted.

81. It was so agreed.

82. New paragraph 13, as amended, was adopted.

New paragraph 14

83. Mr. SIMMA said that he wished to propose an additional paragraph, reading:

> "14. With regard to article 12, the Committee notes the deplorable state of mental health care in Mauritius. It is also concerned about the fact that over one half of the maternal deaths since 1982 have been due to complications following illegal abortions."

84. Apparently there was only one hospital which admitted the mentally ill in the country, and all sources, even those very defensive of Mauritius, had said that their situation was shameful. With regard to the second point, abortion was illegal in Mauritius and carried extremely heavy penalties; and consequently there were many illegal abortions with the consequences to which he had referred. He had worded the second sentence very carefully in order to avoid touching on the ideological issue of abortion itself.

85. The CHAIRPERSON, speaking as a member of the Committee, said that the subject was indeed a very sensitive one and he felt that the members of the Committee should have the proposed text in writing in order to reflect on it. The Committee was familiar with his own vehemently anti-abortion position.

86. Mr. CEAUSU noted that the second sentence referred to "the fact that", but that Mr. Simma actually had no official facts at his disposal, from either the Government of Mauritius or other official sources. The phrase in question could perhaps be changed to "certain information according to which".

87. Mr. TEXIER observed that Mr. Simma had been asked by the Committee to draft concluding observations on a country which had ratified the Covenant in 1976 but had never submitted a report. He failed to understand why the Committee should not have confidence in the drafter and why it should constantly question his sources. Obviously, in the absence of a report from Mauritius, Mr. Simma could not have access to any "facts" from official sources. In such cases the Committee's sources were intergovernmental, such as ILO, the other human rights treaty bodies and the like, or non-governmental. He rejected the a priori position that Governments were always trustworthy and non-governmental organizations were not. The organization cited earlier by Mr. Simma, for instance, Justitia et Pax, was not obscure or unreliable - indeed, it was in consultative status with the Economic and Social Council and regularly addressed the Commission on Human Rights; he personally had more confidence in it than in a State Department. He believed the members should be grateful to Mr. Simma for his work and accept his judgement as to the sources.

88. With regard to article 12 of the Covenant, if the health care in Mauritius was deplorable, the Committee should say so and let the Government come back to challenge it. If many women died because of illegal abortions, that too should be said, and to do so did not constitute a reflection on anyone's position on the ideological issue.

89. The CHAIRPERSON said that obviously all members of the Committee respected Mr. Simma's ethical and intellectual qualities. His own problem with regard to article 12 was not with the sources Mr. Simma had cited. All draft texts had to be discussed democratically in the Committee and each member had a right to his opinion.

90. Mr. GRISSA said that he had not been questioning Mr. Simma's integrity or intellectual neutrality, but felt that all members of the Committee, when drafting such a text - as all did at one time or another - should carefully scrutinize their own sources. The concluding observations, once adopted, would be the Committee's, and all must contribute.

91. Mr. KOUZNETZOV said that it should be made clear to the Government of Mauritius that it was its fault that the Committee, for lack of reliable Government data, had had to use a variety of sources like ILO or the World Health Organization (WHO) or non-governmental organizations. On the other hand, the Committee also had to trust non-governmental organizations, even though their information might not be quite accurate.

92. Mr. SIMMA thanked Mr. Texier for his comments regarding sources. He again drew the Committee's attention to introductory paragraph 3, a standard paragraph in concluding observations written in the absence of a government report. It gave the Committee's philosophy regarding sources, and made it clear that its conclusions were necessarily one-sided and that it was for the Government to set the record straight.

93. In the proposed paragraph under consideration, his sources regarding maternal deaths had been WHO and the Mauritius Family Planning Association, which had prepared a long study.

94. He would put the rest of his amendments in writing before the Committee at the following meeting.

The meeting rose at 6 p.m.